

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

NO. 4:14-CR-67-FL
NO. 4:16-CV-184-FL

JOHNNY TYRONE HOPKINS,)
)
Petitioner,)
)
v.) ORDER
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

This matter is before the court on petitioner's motion to vacate sentence under 28 U.S.C. § 2255 (DE 35), and the government's motion to dismiss, (DE 46). Although petitioner asserts a claim pursuant to Johnson v. United States, 135 S.Ct. 2251 (2015), petitioner's sentence was not enhanced by the "violent felony" residual clause of the Armed Career Criminal Act ("ACCA") discussed in Johnson, or any other provision based upon a prior crime of violence. Rather, petitioner received a sentence of 60 months on count 1, for drug distribution conspiracy, under 21 U.S.C. §§ 841(b)(1)(B) and 846; and 60 months on count 2, consecutive, for possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c). Therefore, Johnson is inapposite. Accordingly, the government's motion to dismiss is GRANTED and petitioner's motion to vacate is DENIED. After reviewing the claims presented on collateral review in light of the applicable standard, the court finds that a certificate of appealability is not warranted. 28 U.S.C. § 2253(c)(2).

SO ORDERED, this the 16th day of December, 2016.


LOUISE W. FLANAGAN

United States District Judge